

Surface Transportation Board, DOT

§ 1039.14

(2) A finding by the Board that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

§ 1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

§ 1039.14 Boxcar transportation exemptions and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV except as otherwise provided in this section.

(b) The Board retains jurisdiction in the following areas:

(1) Car hire and car service.

(2) Mandatory interchange of equipment.

(3) Reciprocal switching or joint use of terminal facilities.

(4) Car supply.

(5) Freight car pooling agreements.

(6) Freight rates applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier, to the extent provided in paragraphs (c)(4) and (c)(5) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Board. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Board in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) The authorization in paragraphs (c)(1) (i) and (ii) of this section will not apply to excluded carriers, as defined in paragraph (c)(2)(i) of this section, nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c)(2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) To an excluded boxcar owned or leased by an excluded Class II carrier beginning on October 16, 1986, and ending on October 31, 1990, so long as such boxcar has not been otherwise owned or leased by another carrier during this period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

(iv) Nothing in paragraph (c)(2) of this section will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under paragraph (c)(2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1, 1986, and any modification to the existing car hire formula will not apply to such cars. With respect to an excluded boxcar owned or leased by an excluded Class II carrier, those car hire